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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 218

L. E. DOGGETT, *Petitioner*

v.

COMMISSIONER OF INTERNAL REVENUE

On Petition For a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

REPLY BRIEF

TO

BRIEF FOR THE RESPONDENT IN OPPOSITION

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ARGUMENT

A. In Respect to "Evidence" Unfavorable to Petitioner

In reply to the Brief For The Respondent In Opposition, petitioner respectfully submits that the issues on which the petitioner has based his petition for a writ of certiorari are issues of law, having to do with the legality of the evidence on which the courts below based their determinations.

The courts below evaluated the "evidence" unfavorable to petitioner by determining that the testimony of the bookkeeper, Hobgood, was essential to the government's burden of proof in respect to the issue of fraud. Petitioner maintains that the testimony of Hobgood cannot be accorded credibility as a matter of law for the patent reason that Hobgood's testimony stands impeached on the face of the record as to the most important factual issue in the case. Such testimony carries its own "death wound" in the same manner such testimony was condemned in *National Labor Relations Board* v. *Pittsburgh Steamship Company*, 337 U. S. 656, 659 (1949). To the same effect is the principle in the time honored case of *The Santissima Trinidad*, 7 Wheat. 283, 339 (1822), wherein this court sanctioned the principle, *falsus in uno, falsus in omnibus.*

B. In Respect to Evidence Favorable to Petitioner

The petitioner herein admittedly made none of the false entries in the records in question. The only question was whether or not petitioner had knowledge of such false entries. (Brief For Respondent In Opposition, p. 7). The court below made its own evaluation of certain favorable evidence offered by petitioner (to the effect that he voluntarily produced the cash books) saying:

> "The testimony, if believed, would support the inference . . ." (Ap. 23a, Petition For A Writ of Certiorari).

The inference in question is the one which had just been referred to by the court below in the following words:

> ". . . the inference that the taxpayer was not informed of the discrepancies between the cash book and the journal." (Ap. 23a, Petition For A Writ of Certiorari).

It is respectfully submitted that the fact of voluntary disclosure of the cash book by the petitioner is supported by the unimpeached testimony of three credible witnesses in addition to the testimony of the petitioner, is not controverted by *any* lawful evidence and that the court below was under a legal duty to accept such manifest and obvious fact. The principle of law is set forth in *International Shoe Company* v. *Federal Trade Commission*, 280 U. S. 291, 299 (1930) as follows:

> ". . . And since there is no testimony to the contrary and no reason appears for doubting the accuracy of observing or credibility of the witnesses, their statements should be accepted."

The court below categorized the testimony of the three witnesses plus that of the petitioner as "improbable". (Ap. 24a, Petition For A Writ of Certiorari). Petitioner submits there is nothing improbable about the voluntary disclosure of books and records by an innocent taxpayer. The efficient functioning of the Internal Revenue Service depends upon such probability. Voluntary disclosure is improbable *only* if it be *assumed* petitioner is guilty of fraud. Such assumption ignores and nullifies the very evidence of innocence which is essential to a fair determination. It puts the cart before the horse. Utilizing a predetermined assumption of guilt to destroy the evidence of innocence rather than using the evidence to determine guilt or innocence reduces judicial process to a fiasco.

CONCLUSION.

The doctrine of *Comstock* v. *Group of Investors*, 335 U. S. 211, 214 (1948) relied on by respondent is not properly applicable to the instant case. The courts below have reached a determination unsupported by lawful evidence. They have refused to give judicial recognition to lawful evidence which would concededly exonerate petitioner of the charge of fraud. The petition for a writ of certiorari should be granted.

Respectfully submitted,

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